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Dilemmas of Direct Democracy: The European Union from Comparative Perspective

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ABSTRACT

In recent decades Europe's political landscape has been marked by a notable rise in the use of mechanisms of direct democracy such as the referendum and the citizens' initiative. Our focus in this article is on the national referendums that are directly connected to the European Union (EU) integration process. These types of referendums are increasingly recognised by the scholarly community as the source of institutional instability across the wider EU polity. To explain the nature of this empirical puzzle is this article's main objective. However, instead of pursuing intra-EU comparisons, as does much of the literature, we adopt a comparative perspective on the EU that involves the explicit comparison with other polities. In doing so, we bring to the fore a neglected dimension in the study of EU referendum politics: the operation of federal political institutions. We contend that cross-polity comparison of EU forms of direct democracy with other polities reveal insights that suggest a number of institutional models to overcome the sources of the present instability.

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1. Introduction

The politics surrounding European Union (EU) related referendums has received a great deal of scholarly attention recently. This is due to the fact that referendums on EU integration can, and do, produce extra-territorial effects beyond the particular member state holding the referendum. It is in this sense that these types of EU-related referendums are generating a sort of structure induced *disequilibria*¹ –in other words these referendums are at the source of increasing institutional instability in the EU. The main focus of this article is to try to explain the nature of this empirical puzzle. We argue that to identify the sources of such institutional instability requires us to look beyond the confines of the EU. In short, it requires a cross-polity comparison. This approach is rarely undertaken in the literature however. Although many analyses are comparative, they usually take the form of an intra-EU comparison (e.g. comparing voter or elite behaviour across member states of the EU). The comparative politics approach we adopt is predicated on the explicit structured and focused comparison of the EU with other polities. In particular, we adopt a comparative federalism lens to understand the interplay of federalism and direct democracy in the European integration process. In approaching the subject matter in this fashion, we are putting at the core of the analysis a neglected dimension to the study of EU-related direct democracy, the role of federal political institutions. Bizarrely, given the amount of scholarship on this topic, this has not yet been done explicitly.

The referendum politics of the EU can be approached from a number of disciplinary angles. We shall concentrate primarily on the political science literature, although we should acknowledge the important contributions from the field of law, and especially from constitutional lawyers. For heuristic purposes, we can classify the literature into four broad categories, though, as with most efforts of this nature, the distinctions between categories are often blurred. In fact, the best scholarship tends to span most of the categories suggesting that it is more a question of the degree to which author(s) privilege a particular dimension.

1) *Normative*: This type of approach is dominated by the contributions of legal scholars. Not surprisingly, the focus is on the legal and constitutional provisions to hold a referendum either in a single member state or, from a more comparative perspective, across EU member states. Much of the focus turns on the constitutional implications of member state referendums on EU integration and its impact on the EU polity as a whole (see e.g. the various contributions in Albi & Ziller 2007; Pernice 2006; Auer 2005; Auer & Flauss 1997). Issues of accountability and legitimacy

¹ This inverts Shepsle's (1979) use of the term 'structure induced equilibria'.

are usually at the core of these studies as is the interplay of constitutionalism and mechanisms of direct democracy.

2) *Institutionalist*: Operating at the macro-level, recent institutionalist approaches have focused on trying to explain the occurrence of referendums and the reasons why governments' decide to hold referendums by cognitive factors and norms. These studies are descriptive in their majority (Qvortrup 2002, 2006; Setälä 1999; Bogdanor 1994) and tend to rely on qualitative methodologies. Sometimes the analysis takes the form of assessing the relative merits of rationalist versus ideational approaches in explaining EU referendum domino effects such as those around the European Constitution (Closa 2007).

3) *Behaviourist*: Although most of these studies are 'institutionalist', they can be differentiated from category 2 in terms of their reliance on quantitative methodologies and/or spatial modelling. This could be considered as the dominant approach and it draws heavily from the literature on political behaviour. One set of explanations attributes voting behaviour in EU referendums to individuals' values, beliefs or underlying attitudes towards European integration (Svensson 1994, 2002, 2007; Franklin et al. 1994; Siune et al. 1994); others focus on the evaluation of symbolic political considerations, (i.e. feelings of national identity) in relation to preferences on EU integration and their effects on voting in EU referendums (Hooghe & Marks 2005; Carey 2002; McLaren 2002). Another set of studies have examined how the salience of the issue of European integration affects the ability of voters to make competent and reasoned decisions in a European context (see Christin et al. 2002; Franklin 2002). There are also an increasing number of behaviourist studies that analyse the effects of political parties on holding referendums (Hooghe et al. 2002; Marks et al. 2002; Hix 1999). Indeed, this has generated a lively debate on whether party positioning is top-down (from elites to masses) or bottom-up (from constituents to party elites) (Ray 2003) or a combination of the two processes (Steenbergen et al. 2007). Finally, we should mention the influential work of Hug (2002) due to its systematic theoretical, empirical and comparative framework. Hug employs formal modelling to test the impact of legal-constitutional factors on patterns of voting behaviour (see also Hug & Sciarini 2000; Schneider & Weitsman 1996).

4) *Comparative*: Explicitly comparative approaches, by which we mean comparing the EU-related referendum experience with *other* polities, are characterised by their conspicuous absence. Trechsel's (2005) structured comparison of the unanimity constraint in Switzerland, the US and the EU, and how in the latter case it has not been overcome, is a rare exception. The absence of explicit comparison is a peculiar lacuna in the field since comparison could, conceivably, take a variety of forms. The origins, operation, and sustainability of EU-related mechanisms of direct democracy are topics which, we argue, invite comparison. Each of these

dimensions, in theory, could be compared to experiences in other polities thereby shedding comparative insights on the EU. No doubt because we are intervening in a process that is in its infancy, this is rarely done. In this article we shall pursue this specific comparative route.

This rest of this article is structured according to the following lines. First, it sets out a comparative federalism framework as a tool for case selection. It suggests areas where the interplay of federal and direct democratic political institutions could be investigated. In section 3, this heuristic is applied to the case of the EU to reveal a number of models. We then examine the models against the EU-related referendum experience. The analysis takes two forms: the first stage presents the evidence on EU-related referendums, the second, more qualitatively oriented, offers an analytical narrative on the recent and ill-fated European Constitution. Based on the preceding analysis, the concluding section examines the implications of each model as a means for overcoming the EU's present structure induced disequilibria.

2. Comparative federalism as a tool for case selection

Federalism was famously described by one of its most prominent scholars, William Riker, as a theory of government that uses a system of checks and balances to curb power and offers an alternative to empire (Riker 1964). This being so, it is surprising how the federalism variable has been conspicuously absent from analyses of the EU's experience with referendums. If anything, the EU's most recent referendum experience has demonstrated the 'check' function of national referendums on the perceived imperial ambitions of EU elites –at least from the perspective of 'no' voters. In order to investigate the interplay of federalism and direct democracy in the European integration process, let us start with some definitions. According to Føllesdal (2003), a federal arrangement refers to a political order where 'final authority is divided between sub-units and a center' and in which 'sovereignty is constitutionally split between at least two territorial levels so that units at each level have final authority and can act independently of the others in some area.' This suggests a promising avenue for comparative research on the EU but raises one potential point of controversy: federalism and statehood. The EU is clearly not a state, but, as one eminent scholar of federalism has argued, a federal arrangement need not be coupled with notions of statehood (Elazar 1987). Much of the literature on European integration follows some rather different premises however. Put simply, many students of EU politics part from what in the jargon is known as the $n = 1$ problem, the notion that the EU is a unique case, *sui generis* (Hix 1998). But, so too are continent-sized polities like the US and Brazil, or smaller ones such as Switzerland and Belgium. Does this mean we should not compare these polities? Clearly not. A consequence of the EU *sui generis* model is that comparison is avoided in favour of solipsistic theorisations about unique

integration mechanisms or novel forms of governance that are not necessarily rooted in the broader political science discipline. To the extent that the EU has features comparable to more mature political systems, we should explore the explanatory value of the comparative method and this, we argue, applies with equal force to the study of EU-related direct democracy. With this broad disclaimer in place we can now proceed and set out a comparative federalism framework for investigating the EU.

The literature on federalism tends to identify a special category of federations among the so-called advanced democracies. The 'five usual federal suspects' $n = 5$, are Australia, Canada, Germany, Switzerland, and the US. The five usual federal suspects have figured quite prominently in policy studies, although sometimes the federal $n = 6$, when Austria is added (e.g. see Keman 2000; Lijphart 1984). More problematic is the inclusion of other quasi-federal suspects such as Belgium, Spain and Italy, though these can be referred to as a distinct category of 'regionalised systems' (Braun 2000). For instance, on the basis of a series of empirical indicators, such as central and sub-unit revenues and expenditures, regional grants from central government, and the strength of bicameralism, Braun (2000) identifies a distinct 'federal group' composed of the five usual federal suspects. There is thus a reasonable degree of consensus in the literature as to this special category of advanced industrial states.

The argument put forward in this article is that it is possible to narrow this federal group further still. This is precisely the logic behind some of the latest comparative federalism scholarship on the EU (Menon & Schain 2006). A number of relevant concepts emerge from the literature that essentially refer to the same phenomena: 'compound polity', 'separation of powers federal system', and 'fragmented power federal systems'. We shall employ the less wordy concept of a compound polity. The term is used by Fabbrini (2004) to describe a form of political organisation that is characterised by a *dual or multiple* separations of powers: vertically between the sub-units and the centre; and horizontally in terms of divided institutions. All federal states have a vertical separation of powers between territorial units, though, this does not imply they separate power across horizontal institutions. According to Fabbrini (2004), apart from the US, the only other 'compound polity' that exists which is organized around a federal distribution of territorial power and a separation of institutions at the governmental level is Switzerland. However, he then omits the Swiss case to argue that the EU is a compound polity *à la US* (see also Fabbrini & Sicurelli 2004). Kelemen's work on 'separation of powers federal system' also explicitly incorporates the EU to his research design (2000, 2004). Kelemen identifies two types of federal polities: '*separation of powers federal systems*' and '*parliamentary federal systems*'. He includes the US and the EU within the first category, while Australia and Canada (Germany could also be added) fall within the second. We can surmise,

therefore, that a compound polity is a special class of federal polity that is characterised by a fragmented centre and needs to be distinguished from classic parliamentary federal systems (e.g. Germany, Australia and Canada). In the latter case, the executive and legislature are fused whereas in a compound polity there is clear separation (Kelemen 2000). Therefore, from a comparative federalism perspective the US, Switzerland, and the EU form a very limited universe of compound polities. Given that the object of our comparative inquiry is to shed comparative light on the EU, we can refer to this as an $n = 2 + \text{EU}$ type of research design (where the 2 refers to the US and Switzerland). What are the implications of this type of institutional setting for investigating political processes, and can any comparative insights be applied to patterns of EU-related direct democracy?

We know that the institutional design of a polity has a significant impact on a host of political processes, for instance, on the way in which elections and parties function or on policy and regulatory styles, to name but a few. Indeed, this is the main contribution of what goes by the name of 'new institutionalism' in political science. Essentially, the institutional setting determines political opportunity structures by constraining/enabling particular courses of action to political agents, thus, producing so-called 'structure-induced equilibria' (Shepsle 1979; Riker 1980). In short, institutions matter and we should be able to detect their effects on, say, the policy process or party system. An obvious corollary is that this could be the same for the operation of mechanisms of direct democracy in the EU. Recent comparative research on the EU has shown that with regard to the policy dynamics, compound polities do produce distinctive features in a broad range of policy fields including the environment (Kelemen 2000), fiscal and monetary policy (McKay 2005), social regulation (Obinger et al. 2005), and internet policies (Mendez 2005). What about the nature of political contestation, the party system or the way in which elections and parties function? Clearly, this is an area inextricably connected to our broader theoretical and empirical ambitions for understanding the EU-related referendum experiences.

Over the last two decades the EU has become a much more hotly contested arena for political parties, interest groups and social movements. The rise of EU-related referendum politics is clearly a manifestation of this politicisation. One place to start, therefore, is to examine the nature of political contestation over European integration. Scholarship in this area draws much of its intellectual inspiration from the 1960s research of Lipset and Rokkan (1967) on cleavage structures. Applied to the EU, comparative politics research in this field focuses on the contours of the EU political space. Such research is directly relevant to our empirical inquiry. One contribution to the field, the Hix and Lord model, postulates two dimensions of contestation that shape the European political space: more versus less European integration on one axis, and

Left versus Right ideology on the other axis (Hix 1999; Hix & Lord 1997). In the language of Lipset and Rokkan the first dimension is territorial while the second is functional. Hix and Lord's argument is that these axes exist in the EU much in the same way as the territorial and functional cleavages persist in compound polities such as the US and Switzerland (the same can be said for Belgium and Canada)². In this connection Riker, also writing in the 1960s, drew attention to the party system as the main variable intervening between the background social conditions we have just identified and the sustainability of a federation (1964). The more decentralised the party system, the more unlikely a centralised federation would develop. One implication that can be drawn from this is that fragmented horizontal institutions in multi-tiered polities tend to have a considerable impact on the party system (Hix 1998: 31). Many indices have been compiled for comparative research on the EU and federal party systems that suggest a broad area of homogeneity (Thorlakson 2005). For instance, the party system tends to be decentralised and less cohesive in compound polities. All of these factors play a crucial role in structuring the European political space, its party system and the nature of political contestation. By extension, it is likely that this will directly impact on EU-related referendum politics. We shall return to these questions below.

3. Inserting direct democracy into the federal equation

A broad area of homogeneity has been established to narrow our federal universes to three cases. Furthermore, it has been argued that the basic institutional set up of 'compound polities' has important structuring effects on within-polity forms of political contestation in the European political space. By extension, it can be hypothesised that this will impact considerably on EU-related referendum politics. Let us now introduce mechanisms of direct democracy more explicitly into the federal equation. What can we learn? The first thing to note is that mechanisms of direct democracy exist in all three polities. At a superficial level, there is some degree of similarity among the cases in terms of the use of mechanisms of direct democracy at the sub-unit level. There is, of course, a considerable degree of variance in the intensity of use and spread at the sub-unit level among the three polities. Nevertheless, the mechanisms are present in one form or other across the cases. At one extreme, a small number of EU member states have a well established tradition of direct democracy (e.g. Italy, Ireland, Denmark) and this may be spreading to some of the recently democratised countries and new member states of Central and Eastern Europe (e.g. Slovenia, Estonia, Lithuania). At the other end of the spectrum, mechanisms of direct democracy are firmly rooted in the political culture of Switzerland and are used across all the sub-units, i.e. the cantons (Linder 2006). Somewhere in the middle is the US where

² For an extended discussion see Mair 2004 and Hooghe et al. 2002.

almost half of the states (24 states) have well established mechanisms of citizen initiatives and referendums (Bowler & Donavon 1998; Butler & Ramney 1994)³. Similar patterns can be found at the sub-sub-unit level in the US where many localities offer these participatory mechanisms (Matsusaka 2003), and the same is true for EU member states. From comparative perspective Switzerland is, again, an outlier in terms of the practice of direct democracy at the communal level.

Instruments of direct democracy can therefore be considered as well established practices across the three cases although their intensity and spread may vary at the sub-unit level (and lower-level units). When our attention is turned to the federal-level however, a rather different picture crystallises. Here one can clearly distinguish between the US and the EU on one side, and Switzerland on the other. There are no mechanisms for federal-level referendums in the US or in the EU. In fact, if we extend our sample to include the other 'usual federal suspects' we find that the same is true for Germany where, largely as a result of the negative Weimer republic experience, referendums are banned at the federal level. Australia and Canada, on the other hand, have had federal-level referendum experiences though this needs to be qualified. The federal referendum tool has rarely been used in Canada (three times in its history), whereas in Australia 49 federal referendums have been held thus far.⁴ With 550 referendums since its foundation as a modern federal state in 1848, Switzerland is clearly an outlier case among federal states in terms of the intensity of its use of federal referendums⁵. By contrast, there are no mechanisms for holding federal level referendums in the EU or the US. This is despite periodic calls for holding a national referendum in the US (a national initiative to be more precise) and similar calls in the EU (Magleby 1998 on the US). In fact, there were serious calls during the drafting of the European Constitution for an EU-wide referendum, but these were eventually shirked by the Presidium that drafted the document (de Witte 2005).

Based on the analysis above it appears that the EU is closer to the US model. This suggests an important distinction among the three compound polities: the presence or not of federal-level referendums. However, to leave the issue here would be rather premature and ignore a critical element. In the US model, the sub-units are prohibited from undertaking referendums on federal issues. In the Swiss model there are various constitutional mechanisms, some mandatory others optional, for the sub-units to act as a veto point through popular votes on federalisation issues. In the EU case, under special circumstances, the sub-units can also

³ In fact, all US states except for Delaware have a provision for a constitutional referendum for amendments to state constitutions (see Magleby 2001)

⁴ Further information on the referendums can be obtained at the C2D's database: <http://www.c2d.ch>

⁵ Data available at the c2d database: <http://www.c2d.ch>

perform this veto role suggesting a functional similarity of sorts among the two compound polities –at least from a bottom-up sub-unit perspective. There is something clearly anomalous here. In line with the geometric heuristic of this article, the anomaly can be expressed in the following way: The EU is characterised by the presence of horizontally fragmented referendum mechanisms across the sub-units on *federal-level* issues, whereas Switzerland possess vertically integrated referendum mechanisms at the federal level. In other words, some sub units (e.g. Ireland, Denmark or France) hold EU-related referendums while others (e.g. Germany and Greece) do not. This is what we refer to as horizontal fragmentation. In the Swiss case, vertically integrated referendum mechanisms imply horizontal homogeneity across the sub-units on federal level issues since all the sub-units are required to vote (this is what is commonly understood as a federal referendum). As discussed above, horizontal fragmentation in the US and the EU certainly exists across the sub-units on sub-unit issues (i.e. referendums on state-level issues in the US or member state level issues in the EU). This need not be a source of institutional disequilibria so long as the referendums are *not* on federal-level issues. The problem is clearly with regard to federal-level issues. In relation to the EU, therefore, the problem is clearly rooted in the presence of horizontally fragmented referendum mechanisms across the sub-units on federal-level issues. Most analysts would certainly concur with the diagnosis –it is not the stuff of rocket science. However, we argue, that in formulating the problem in this comparative way we are able to identify a number of possible trajectories, or models as we call them. We can now explore the features of these EU-related direct democracy models in more detail.

We start with the assumption that the EU faces a problem and that this is in some way connected to its institutional design. This is a relatively uncontroversial statement on which there is a high degree of scholarly consensus (Ponzano et al. 2007; Trechsel 2005). Our next claim is that the problem is producing certain structure induced disequilibria. This last claim needs some further substantiation, though some progress has been made. Using the comparative method –that is by highlighting similarities and differences among compound polities- we have identified one possible source of the problem among compound polities. It seems that this anomalous feature of the EU is at the core of the empirical puzzle this article addresses. Can comparative federalism shed any further explanatory light on this? In order to try to answer this question, let us restate the problem in terms of possible models deductively drawn out from the analysis thus far.

Figure 1. Models of compound polity related direct democracy (DD)

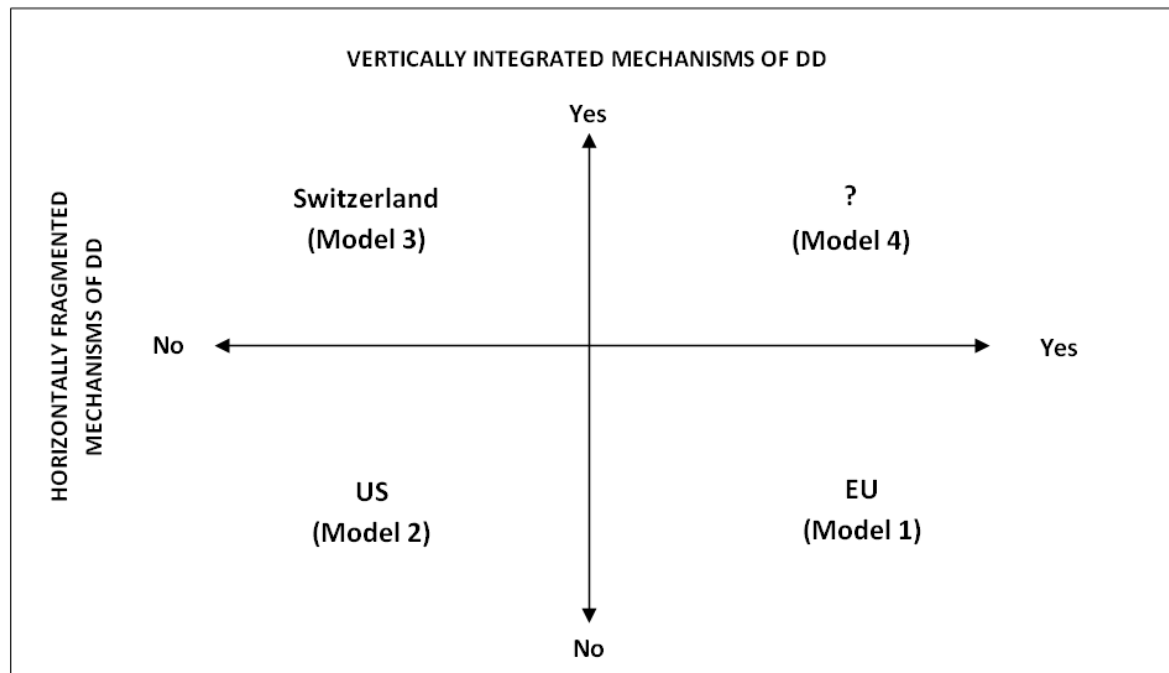


Figure 1 identifies the four possible models drawn out from our analysis. The two dimensions represent the vertical and horizontal elements of our analysis and graphically depict the anomalous position of the EU. Referred to as Model 1, or the status quo, the EU position in the lower right quadrant is the source of institutional disequilibria –at least with regard to the operation of EU-related referendums. Apart from the present EU model, there are at least two further models that we can empirically identify from a compound polity perspective. We have sketched out the contours of these models in the preceding analysis. To briefly recapitulate, Model 2, the US model, does not possess vertically integrated referendum mechanisms at the federal level (i.e. no federal referendums). Furthermore, it is not horizontally fragmented on federal level issues since the sub-units cannot undertake popular votes in this domain (i.e. no state-level referendums on federal issues). Functionally, this is not dissimilar from the German case. The Swiss variant, model 3, has vertically integrated institutions of referendums on federal issues. This implies a horizontal homogeneity across the subunits on federal level issues. Although procedures and intensities may differ, this is functionally similar to Canada and Australia. The question mark in the upper right quadrant suggests a theoretical construct for which there appears to be no known empirical case –at least with regard to our federal universe of five, or our sample of the three compound polities.

Our comparative analysis has led us to deductively identify these distinctive models. If we assume that the EU-related referendum problem

is a source of institutional disequilibria that will need to be addressed, as we do, then it follows that these are the *only* models available. To explore the relative merits or likelihood of each model, we shall need to take a closer look at the data on the EU-related referendum experience. Do these data reveal any distinctive patterns that may favour one or another model?

4. Charting the rise of direct democracy in the EU

A total of 47 EU-related referendums have been held over the last fifty years. Tables 1-3 (see below) show the frequency of votes and the emerging patterns – essentially an increase over the last two decades independently of how we classify the referendums. In many respects, the referendums provide us with a rather neat proxy for the relative politicisation of the EU. For more or less the first 30 years of its history the EU (the EC as it was then called) was a rather low profile affair mostly preoccupied with the technicalities of establishing a customs union and a common market. Incidentally, this is the period where the nation-state reached its apogee and Europe was certainly below most citizens' political radar screen. The literature has sometimes referred to this as the 'permissive consensus', a golden age where citizens appeared to provide elites a free reign on EU matters (Norris 1997). By the mid-1980s however, a number of externally induced challenges, such as the twin oil shocks, resulted in many member state pursuing divergent response to the economic fallout and this appeared to be adversely affecting the European economy. Crucially, it provided EU policy elites with the opportunity and justification to put forward a series of federalising measures around a constitutional package referred to as the Single European Act (McKay 1999). The common market was now effectively reinvented as the 'internal market' and sold to EU citizens as part of a new liberalising programme set against a psychological deadline, 1992. This process, it could be said, reached its climax with the creation of a single currency, the euro, and the establishment of the European Central Bank in the late 1990s. In this connection, France's 1992 'petit oui' on the Maastricht Treaty, 51 per cent in favour, and Denmark's 'no'⁶, provided some of the first signs of the awakening 'sleeping giant' of political contestation on European issues (van der Eijk & Franklin 2004). Indeed, as any student of federalism knows, regulating markets can quickly spill-over into other domains.

⁶ A 'yes' vote was achieved in 1993, the following year, when the Danes voted for the second time.

Table 1. EU-related referendums 1958-2007 (includes non-EU member states)

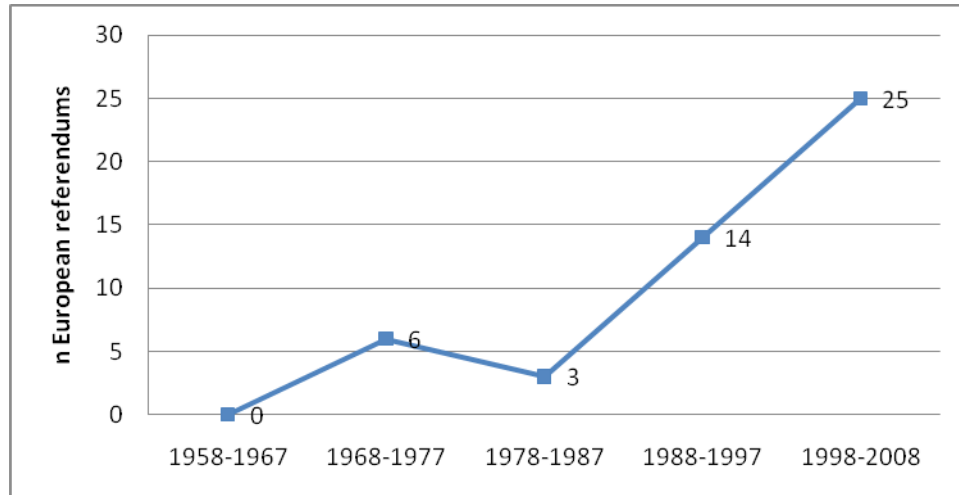


Table 2. EU referendums of the current 27 EU member states

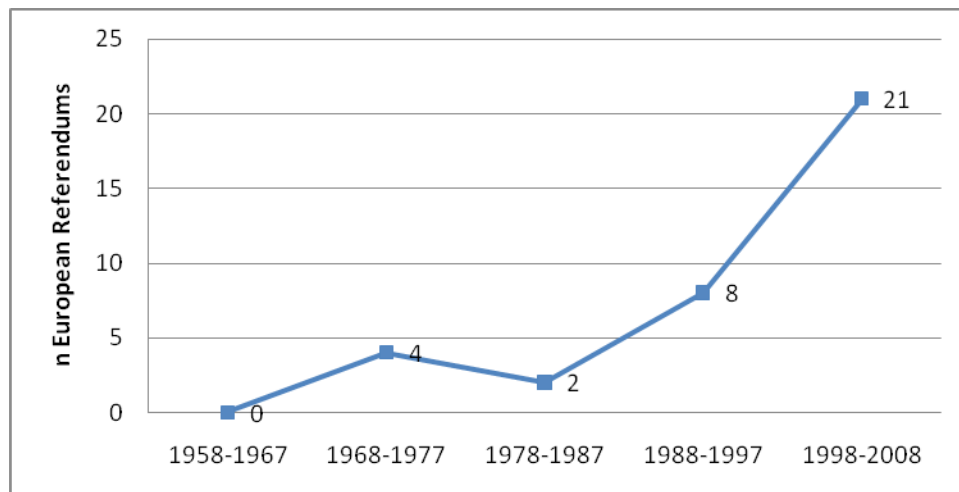
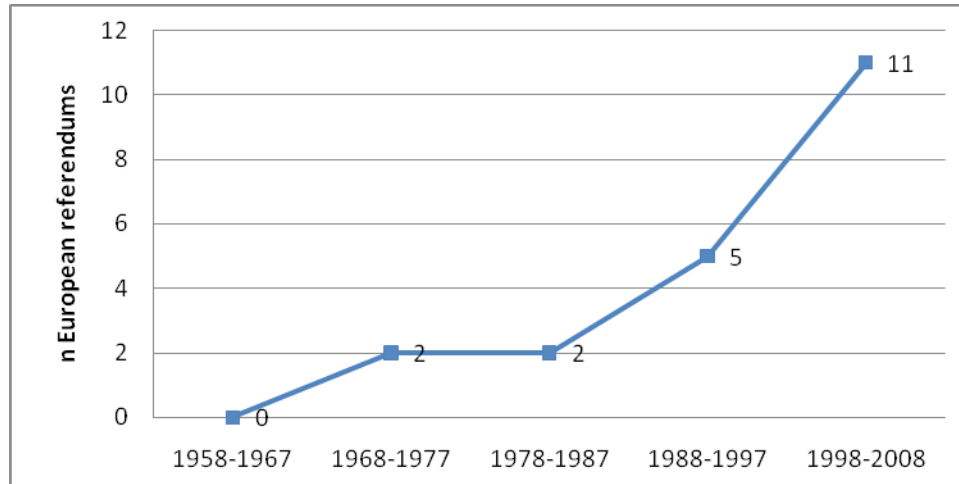


Table 3. EU polity referendums (excludes non-Member states and Accession referendums)



And so this has been the case with the EU. By the late 1990s a new mobilising agenda centred on establishing an 'area of freedom, security and justice' generated a flurry of policy initiatives in a domain that, in contrast to technical regulatory questions, now touched upon core areas of statehood. The creation of a European Police Office, a European Counter-Terrorism Coordinator, a Joint Situation Centre for coordinating intelligence, or a European External Borders Agency, are just a few examples of the activity in this domain. In a similar vein, the geo-politics of the new post-Cold War order propelled EU policy elites to seek, if not a common policy, then, at least greater coordination in foreign and defence affairs. How else could member states deal with security problems in their own backyards such as the fallout from the dissolution of Yugoslavia? One does not need to be armed with the latest public opinion data to acknowledge that this activity over the last two decades has led to greater political contestation around the European issue (Hooghe et al. 2002). It is no accident, therefore, that this is neatly dovetailed by the activation of increasing EU-related referendum politics as shown in the tables.

The cursory sketch of EU policymaking patterns over the last fifty years reveal classic patterns of political authority transfer that are familiar terrain to any student of federalism (Donahue & Pollack 2001). Indeed, these patterns and processes of federalisation would be immediately recognisable, say, to a constitutional lawyer acquainted with the US or Swiss model of federalism. Are there any specific constitutional or institutional features that can account for the particular sequencing of EU-related referendums? And, can comparative federalism shed any further light on this matter? Perhaps it can. For instance, we know that political dynamics in federal polities tend to be characterised by a continuous ebb and flow of authority among various levels of public authority and that this

can generate high levels of 'constitutional politics' over the appropriate vertical allocation of authority (Donahue & Pollack 2001). The point is that there are some very important path-dependent reasons for this (Pierson 2000). Two factors can be especially singled out. First, compound polities, such as the US and Switzerland (to which we add the EU), constitute examples of what Alfred Stepan classifies as 'coming together' types of federalism (1999). This type of polity consists of a coming together of previously distinct units to form a new body politic. Most importantly, these polities tend to be characterised by a fear of excessive central government power and possess institutional arrangements that constrain the centre from overriding the sub-units (Føllesdal 2003). Second, there are constitutionally codified protections to prevent this from happening. Thus, a common feature of compound polities is that one of the core powers delegated to the centre is the regulation of the market. On the other hand, another common feature of compound polities is that matters related to internal security, for instance, have typically been reserved to the sub-units. None of the foundational constitutional texts in the US, Switzerland, or the EU contained provisions that granted the centre competencies in the field of internal security. Creeping centralisation evolved over time and as a result of intense policy clashes.

There is one last element that needs to be added to this argument. It reveals a difference among the compound polities that may account for the sequencing of EU-related referendums. It amounts to this: whereas the US has a very succinct Constitution with remarkably concise coverage of competences, the lengthy constitutional documents of the EU and Switzerland have much more complex catalogues of competencies.⁷ This suggests another factor at play in explaining the accretion of powers to the centre: the role of non-majoritarian institutions. In the US the federal legislature has been aided in its federalisation efforts by judicial activism on the part of the Supreme Court. These options are simply not available in the EU or Switzerland. Instead, constitutional amendments in areas reserved to the sub-units are subject to a popular vote in Switzerland and, in the EU, to the periodic and familiar constitutional amendment packages referred to as Treaties. In short, while EU politics was mainly about technical and regulatory matters concerned with the common market, there was little need for constitutional amendments. The relevant regulatory powers were contained in the foundational constitutional text, the 1957 Treaty of Rome. But, as soon as the EU desired to address adjacent policy areas in response to external and internal challenges, such as monetary union, internal security or foreign affairs, then constitutional amendments permitting such action would be required. Federal legislation could not simply be passed in these new areas of policy concern without the explicit attribution of such competences. There was no other

⁷ As Pernice (2002) notes the EU has a very detailed, differentiated and complex catalogue of competencies.

constitutional anchor on which to proceed, nor any scope for the European Court of Justice to engage in the kind of judicial activism characteristic of the US Supreme Court in these new policy areas. Instead, the constitutional packages that we have come to recognise as the successive EU Treaties had to be negotiated. In view of some of the sensitive areas that these treaties now touched upon, the incentives were ripe for greater politicisation and the activation of EU referendum politics. This accounts for the patterns of EU-related referendums in tables 1-3 above, and, perhaps more importantly, suggests that it will continue to be a feature of EU constitutional politics.

5. The fall of direct democracy? The EU Constitution and its sequel(s)

From a comparative federalism perspective, the patterns and timing of EU-related referendums exhibit features that are not surprising. As the preceding section has argued, there is nothing especially puzzling about their recent proliferation. Still, we are some way from adjudicating between the competing models with which we started. A closer look at the EU's experience with the European Constitution and what we refer to as its sequel(s) may provide us with some further insights.⁸ Could the European Constitution and its sequel(s) represent a critical juncture for EU-related referendum politics? The first thing to note is that for the best part of almost a decade, EU leaders and policy elites have been engaged in an institutional drama of continent-wide proportions. Four European cities can neatly serve as symbolic markers of the process. Laeken, where the initial script was drawn up in 2001, provided the basis for creating a constitutional convention presided by the former French President Giscard D'Estaing. It led us directly to Rome where the European Constitution was ceremoniously signed in 2004. After the French and Dutch rejection the following year, a repackaged version of the constitution was signed by EU leaders in Lisbon at the end of 2007. In Dublin, six months later, a 'no' result was announced in June 2008 triggering an immediate political crisis. What can we surmise from the institutional saga and can a comparative federalism framework shed any light on the process?

Let us start with **Laeken** and the resulting constitutional convention. By the time EU elites had decided on this course of action it can be said that the 'sleeping giant' of political contestation on EU matters had been awakened. But what was the rationale behind Laeken in the first place? There is an abundant literature providing 'thick' descriptions of the intricacies of the constitutional convention process (Deloche-Gaudez

⁸ The (s) at the end of the singular 'sequel' denotes the fact that at the time of writing we do not know whether there will be a single sequel (i.e. a ratified Reform Treaty) or whether a new treaty will be drafted.

2007; Schönlaue 2007). This need not concern us. We have already noted that the periodic negotiation of constitutional packages is a staple feature of the federalisation process in the EU. The Laeken declaration and the constitutional convention could therefore be seen from this functional perspective. Alternatively, one could privilege ideational mechanisms as do many constructivist-inspired explanations. Indeed, the importance of ideas and discourses in this initially elite-driven process should not be underestimated. Neither should the novelty and the symbolic significance of the European constitutional convention as a mechanism for further democratisation. Intriguingly, the convention process implicated at least three models of democracy: a *representative* model (through the appointment of national representatives to the Convention); a *deliberative* model (through the discussions and forums that were organised involving wider civil society groups); and a *direct* democracy model (through the referendums that were called for in more than a third of the member states). Clearly, one could draw parallels with similar constitutional conventions processes elsewhere. The most popular default comparison is, of course, with the US Philadelphia (Fabbrini 2004; Deloche-Gaudez 2003). Less attention has been paid to the Swiss constitutional convention of 1847 (Trechsel 2005 is an exception). Yet, as we shall note below, though there were important similarities among the three constitutional convention experiences, crucial differences remained.

Our attention can now be focused more squarely on **Rome** and the subsequent ratification process of the Constitutional Treaty ceremoniously signed there in 2004. The crucial point is that the choice of ratification mechanisms was left to the sub-units (de Witte 2005). This was not wholly unprecedented. For instance, the US and Swiss constitutional conventions had done exactly the same. Interestingly, the EU Constitution even contained a Plan B whereby the EU's highest political body, the European Council, would decide on how to proceed if ratification problems were encountered (Ziller 2007). If after two years of signing the EU Constitution four-fifths of the Member States had ratified it and one or more encounter problems then the European Council would step in. So what went wrong? A historical counterfactual could be offered here as a clue. The constitutional convention process in all three cases involved a rejection of the Constitution by some of the sub-units. Nine Swiss cantons rejected the 1848 constitution as did Rhode Island the US constitution of 1789. It is not clear that ratification would have proceeded as smoothly as it did if Virginia in the US or, say, Zurich in the Swiss case, had said 'no' as did France in the EU.⁹ There is no way to prove this or the equally speculative hypothesis that even if the UK had said 'no' a solution may have been found at the European Council level given the high likelihood of such a 'no'. Clearly, it matters politically who says 'no'. Although legally

⁹ In fact, in the case of the US the imperative that Virginia adopt the new Constitution is highlighted by the 'Connecticut Compromise' which specifically addressed Virginia's outspoken objections.

equivalent, there is a political gulf between a French 'no' and an Irish 'no', as elites in the latter case are repeatedly learning.

It should be noted that EU related referendum politics were triggered well before the European Constitution had been signed. Indeed, a domino effect across the member states could be detected. This is not new. For instance, when the EU enlarged to incorporate ten new member states in 2004 a similar referendum domino effect was generated. Between March and September 2003 nine of the ten candidate countries put EU accession to a popular vote. But these referendums did not impact on the EU-polity as such – they were external-polity referendums whereas referendums on the European Constitution had within-polity effects. Clearly, there is a difference. Nonetheless, the domino effect is important to note. By the time of the first rejection of the European Constitution, the French 'no', ten member states had announced their plan to hold a popular vote. This was certainly not expected. A critical juncture was no doubt the British Prime Minister's unexpected decision to promise a referendum. The French President's decision followed days later. Both decisions were taken by political leaders under intense pressure within their own parties and from opposition parties. There is a lively scholarly debate on the ratification process and why some member states opted for a popular vote while others chose the parliamentary route. Usually it involves pitting rational choice against ideational explanations (see Closa 2007 for a review). Clearly elements of both the logic of calculation and the logic of appropriateness were at play here (Hall & Taylor 1996). In some cases, the explanation is much more straightforward. Germany, for instance, is constitutionally prohibited from holding a referendum though this did not prevent some political forces from calling for one. The French 'no', followed by the Dutch 'no' a few days later, appeared to seal the fate of the European Constitution ceremoniously signed in Rome seven months earlier.

But the European Constitution did not go away – too much political capital had already been invested. Besides, EU elites believed that without many of the institutional changes the EU political machinery would grind to a halt. Thus, after allowing citizens their say and politely listening for a period, EU political elites retook the driving seat and pursued what became the **Lisbon** route. The trauma of the French and Dutch 'no' triggered a number of elite reactions two of which are worth mentioning. The first to come, literally days after the two referendum votes, was the call by European Council for a 'period of reflection'. In parallel, the European Commission launched its Plan D (Democracy, Dialogue, Debate) which was supposed to lay the foundations for the profound debate about Europe's future. The period of reflection conveniently lasted until January 2007 when Germany took charge of the EU presidency. Only a political heavyweight such as Germany under the leadership of Merkel could resuscitate the European Constitution. Much political wrangling took place

as the delicate compromise signed in Rome began to unravel. The negotiations reached a climax with a German and Polish confrontation over voting rights in mid-2007. In the end a compromise was achieved and the new Treaty was to be signed at Lisbon six months later. Rome was reinvented as Lisbon. However, the latter had some of the overt constitutional symbols removed and included a host of inelegant opt outs, and special protocols. Can any comparative insights be drawn? Actually they can. As noted in the previous section, federal systems are characterised by a frequent need to adjust their constitutional text – whether by express amendment or judicial interpretation – to deal with internal and external challenges. Where powers not explicitly delegated to the centre are reserved to the sub-units, as in Switzerland and the US, federalisation will involve periodic constitutional adjustment. Admittedly, constitutional amendments in the US have been few and far between with only twenty-seven thus far. Instead, it has been the Supreme Court that has played the crucial role in adapting existing constitutional provisions to internal and external challenges. Switzerland's detailed and codified Constitution of 1848, however, was soon in need of revision. In part propelled by a new wave of democratisation at the Cantonal level during the mid-1860s and the need for new competencies for the centre, a revised constitution was proposed by the executive in 1871 and put to the people the following year (Lehmbruch 1993). Intriguingly, like the European Constitution it failed. In fact, it was perceived as too centralising, especially by the French-speaking part. As with Lisbon, a repackaged version was negotiated and resubmitted to the people three years later. The difference, of course, is that the new package was accepted by the Swiss people in 1874. It is important to note that as a compensation for a certain degree of federalisation, the newly revised Swiss Federal Constitution of 1874 incorporated novel mechanisms of direct democracy, such as the federal legislative referendum,¹⁰ while the federal level citizens' initiative followed 18 years later in 1891.

Another major difference between the Swiss and EU example is that the former had overcome the unanimity constraint (Trechsel 2005). In the EU case, in other words, constitutional revision involves unanimity among the sub-units. Thus, while there were parallels in terms of re-submitting a constitutional document to the people important procedural difference remained. Trechsel (2005) has referred to this unanimity constraint as the 'federalist deficit'. In principle, it need not be. In fact, unanimity might not have mattered if ratifying Lisbon would have proceeded through the parliamentary route. The period of reflection had provided EU elites with a unique opportunity to try and neutralise the referendum threat by agreeing on a parliamentary ratification procedure that would avert a popular vote. There was one problem however. Ireland, with 0.8 per cent

¹⁰ Citizens could oppose a federal law within 100 days of its official publication. It was followed in 1891 by the introduction of the citizens' initiative at the federal level.

of the EU population and one of the smallest EU member states, has a mandatory referendum provision for amendments to its constitution ensuring that the Reform Treaty had to be submitted to a popular vote. As with the European Constitution, the fact that **Dublin** would hold a popular vote on the Lisbon Treaty triggered a domino effect of referendum politics across the EU. By referendum politics on the Lisbon Treaty we refer to politicisation of the issue –whether or not to hold a referendum– within and across the member states. This was particularly acute in some member states such as the UK and Holland. In others, politicisation took slightly different forms. Since a referendum is prohibited at the national level in Germany, opposition has taken the form of constitutional challenges. It is not the first time either, the same happened with the 1991 Maastricht Treaty. A similar dynamic occurred in the Czech Republic where the Constitutional court will decide on the compatibility of the Lisbon Treaty with its domestic constitutional order.¹¹ In the end it was Ireland that submitted the constitutional package to a popular vote and Dublin that announced the 53 per cent vote against the Lisbon Treaty in June 2008. It is clearly too early to tell what will happen to Lisbon after the Irish ‘no’. A few pointers, however, can be offered. The reaction of the European Council is illustrative in this regard. Whereas it called for a ‘period of reflection’ after the French and Dutch ‘no’, in the aftermath of Dublin it reached a very different conclusion. The ratification process was to continue as planned and the Irish, in the meantime, would decide what to do next and duly inform their colleagues at the next scheduled summit.¹² Many EU elites are hoping that the Irish will re-submit Lisbon to a popular vote as they did when the Nice Treaty was rejected in 2001. This appears a tall order however. Perhaps we have reached a critical juncture marking the beginning of the fall of EU-related direct democracy.

6. Four models of EU related direct democracy

Does the European Constitution and its sequel(s) represent a critical juncture marking the fall of direct democracy? Furthermore, have EU elites sufficiently learnt from the episode to be able to avoid the national referendum trap? While theoretically plausible there are good reasons to believe that this is wishful thinking. To show why, we shall need to return to the four models of EU-related direct democracy to which we have now added a label for model 4. This article’s main argument is that model 1, the *status quo* model, is the source of institutional instability. This is a relatively uncontroversial statement although our particular diagnosis of the problem and the resulting prognoses are likely to be less so. Let us recall the features of model 1. It is characterised by the absence of

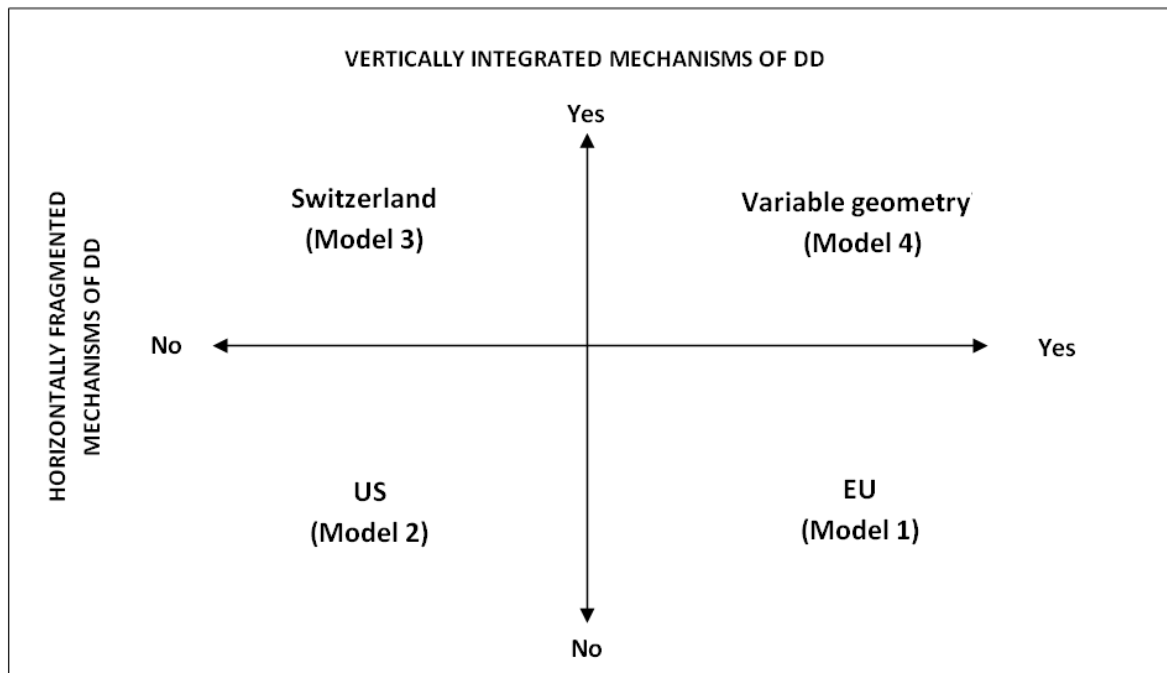
¹¹ In the UK context, the High Court in June 2008 rejected a constitutional challenge arguing for a referendum on the Lisbon Treaty.

¹² See the Presidency Conclusion, Brussels, 19/20 June 2008. Council of the European Union 11018/08

vertically integrated mechanisms of direct democracy and the presence of horizontally fragmented mechanisms of direct democracy among the sub-units on federal-level issues. From comparative perspective, this appears unsustainable. Why should this be the case? Our comparative federalism lens has suggested that compound polities are characterised by particular patterns of federalisation. For instance, in charting the rise of within polity EU referendums (table 3) we saw that the frequency of referendums neatly dovetail the proliferation of the familiar federalisation packages we call EU treaties. The need for these periodic constitutional readjustments is deeply rooted in the legal architecture of compound polities. In particular, where detailed constitutional texts exist, such as those of Switzerland and the EU, the need for frequent constitutional amendments and/or revisions to the constitution is likely to be high. Unless the current Lisbon package (or its sequel) definitively resolves questions of institutional balance, this pattern will continue to persist. And it is here where the specific interplay of federal political institutions and mechanisms of direct democracy is activated. In fact, this was the principal justification for analysing the referendum politics around the European Constitution in more depth. What can we deduce from this? To briefly answer this and relate it to our models we need to refocus on the nature of political contestation in the EU.

In section 2 we noted two dimensions of political contestation that are typical of compound polities, one territorial (more or less European integration) and the other functional (left/right ideology). However, when we look at existing forms of representation in the EU a rather dysfunctional picture emerges that is inextricably connected to EU referendum politics. Two channels of representation exist, European Parliament elections and member state elections. The EU's constitutional architecture is presently structured in such a way that the European Parliament has some impact on the functional dimension, i.e. over the nature of EU policy outputs. Authority with regard to the territorial dimension (more/less European integration), however, rests with the member states. Reflecting on this problem, Peter Mair has argued that the EU is largely depoliticized as a result of the deliberate strategy of elites who are reluctant to be constrained by popular democracy (Mair 2007). Thus, EU elites have depoliticised the EU issue from member state elections, where it presently matters, and competed on the Europeanisation issue (more/less integration) during European Parliamentary electoral contests, where it is largely irrelevant. The cumulative impact, according to Mair (2007), is that citizens are not offered channels for the legitimate expression of opposition *in principle* to the EU, and, because citizens are denied a political arena in which to contest Europe, they are propelled into opposing the EU polity as a whole. The politicisation around EU-related referendums can be understood as a manifestation of this dynamic, i.e. the absence of institutionalised mechanisms of opposition to the EU.

Figure 2: The four models of EU-related direct democracy



The importance of legitimate political opposition as a central component of liberal democracy, has been repeatedly emphasised by one of the foremost scholars of democracy, Robert Dahl (see also Stepan 1990; Kirchheimer 1957). Although there is a comparative politics literature on models of opposition, these usually take the classic parliamentary or Westminster models as the true model (for reviews see Helms 2004; Blondel 1997; von Beyme 1987). However, this model of parliamentary opposition clearly does not apply to our sample of compound polities. While the US pattern of opposition is commonly understood to take the form of congressional opposition to the presidency (or vice versa), the Swiss case appears to be characterised by the absence of institutionalised opposition (Helms 2004; Rose 2000; Glass 1978). In the latter case, all major political forces are represented in a federal-level grand coalition that does not risk, according to Richard Rose, the purgatory of opposition (Rose 2000). Obviously, the type of electoral system (e.g. proportional versus majoritarian) matters here. Nonetheless, in terms of models of opposition, unlike the US model the Swiss system does not possess mechanisms for voters to express their dissatisfaction with governing parties and 'kick the rascals out' of office (on the US/EU see Føllesdal & Hix 2006). Clearly, mechanisms of opposition do exist in Switzerland though these take a special form. This has been categorised as the 'direct democratic model of political opposition' (Helms 2004). In other words, mechanisms of direct democracy are the institutional channel through which the function of opposition is performed. Furthermore, these channels have been at the centre of political competition over the

'territorial' cleavage. Perhaps there are lessons to be drawn here with regard to the EU. Some were identified in the analysis of the referendum politics of the European Constitution and its sequel(s) in section 5. In the absence of other channels to mobilise against the EU, political opposition to the EU has seized, where available, the tool of sub-unit referendums on federal level issues to express anti-federalisation preferences. Are such preferences likely to disappear? If comparative politics has any insights to offer the answer is definitely 'no'. What, then, are the options for the EU?

If model 1 is unsustainable what are the possibilities for an EU move towards model 2 for which the US can be considered as a prototype. This move appears the most straightforward in many respects. It merely implies two things: first no EU level referendum and, second, no member state referendums on EU issues. The first element is easy to address since it does not exist. The second presents a number of problems however. Essentially, it involves banning sub-unit referendums on EU-level issues. There are two ways of trying to achieve this, one informal the other more formal. The informal route was tried during the Lisbon process. After the rejection of the European Constitution, EU elites performed a colossal act of collusion that involved neutralising the referendum threat by ensuring that member states pursued a parliamentary ratification rather than a popular vote. This heroic coordination effort is not to be underestimated, but, as the argument above suggests, it is unlikely that this could ever be repeated, especially if the 'sleeping giant' of European political contestation has finally awoken. Besides, it did not work. Ireland voted no.

The second option, the formal route, would involve prohibiting member states from undertaking referendums on EU issues. Some clarification of what is meant by EU issues is in order. Here, we are referring to referendums on the familiar EU treaties, what Andreas Auer (2007) has labelled 'integration referendums' as opposed to what he calls an 'accession referendum'. The latter includes referendums on adopting, say the Euro currency. Thus, a referendum by a sub-unit on acceding, say to the Eurozone, is legitimate since the consequences are only felt within that sub-unit rather than the polity as a whole.¹³ We can already begin to see the legal minefield that this could open up. Furthermore, historically, EU treaties have bundled 'accession' and 'integration' issues into a single constitutional package (e.g. the Maastricht Treaty). Still, in principle it is possible that the two could be distinguished resulting in the constitutional prohibition of sub-unit referendums on so-called EU 'integration referendums'. How could this be achieved? For a start at least three member states, Ireland, Denmark and France would have to change their constitutions. Even if this were feasible, which we believe it is not, it would still leave unanswered the root problem: an absence of effective

¹³ The same applies to a referendum on enlargement by one of the sub-units, e.g. a vote by France on Turkey joining the EU.

participatory or input-oriented democratic instruments on EU issues. Member state executives would continue to do business as usual at the grand summits and decide on the future pace of integration. As we have argued above, while summits dealt with technical regulatory issues this was fine, but as soon as the focus shifts to, say justice and internal security issues, or foreign and defence affairs, politicisation occurs. If our political elites cannot be trusted, then, how about putting our trust in non-majoritarian institutions? This question opens a curious option, the German model. It is functionally equivalent to the US model, i.e. federal level referendums do not exist and neither can the sub-units undertake popular votes on federal issues. How, then, do they resolve the inevitable tensions that may arise? The Lisbon Treaty (and the earlier Maastricht Treaty) gave us a glimpse of the model. In the absence of mechanisms of popular consultation, political opposition has taken to the Courts. Thus, the decision is left to a non-majoritarian institution, the German Federal Constitutional Court (Majone 2005). It is highly unlikely, however, that the European Court of Justice would ever be given such a power.

If a move towards model 2 looks fraught with difficulties, how about model 3 for which Switzerland can be considered as a proto-type? A move in this direction has, in fact, already been taken. Article I-47 of the European Constitution included provisions for an EU-wide citizens' initiative requiring the collection of 1 million signatures across EU member states for requesting that the Commission propose EU legislation. Furthermore, despite the rejection of the European Constitution, the same provision was kept in the Lisbon Treaty under Article 8b. Does this suggest any parallels with the introduction of the citizens' initiative at the federal level in Switzerland? We know from the Swiss case, for instance, that the introduction of such an innovation had unanticipated consequences by providing new channels for mobilising political opposition (Lehmbruch 1993). We also know from our discussion that the EU suffers from the absence of participatory channels for mobilising political opposition in the EU. Nonetheless, the comparison should not be pushed too far. Without downplaying the significance of the instrument (for instance the US has not implemented one despite numerous calls), the EU variant of bottom-up direct democracy is really a petition rather than a full-blown citizens' initiative *a la Suisse*. Still, as this discussion suggests, if implemented it could have unintended political effects. However, the focus of this article has not been on bottom-up mechanisms of direct democracy such as citizens' initiatives. Instead, the defining feature of model 3 is a federal level referendum. Here, the potential for an EU-wide referendum would constitute a revolutionary act of considerable proportions. For a start, it would only make sense if the unanimity principle were overcome. In other words, some super-majoritarian threshold would have to be instituted for it to have any functional utility. It seems that, much like banning member state referendums on EU integration, and perhaps even more so, a revolutionary act of this nature

seems quite implausible at this particular juncture. The full repertoire of Swiss direct democracy instruments is clearly not feasible for the EU, as the EU version of the citizens' initiative demonstrates, though some less institutionalised variants could perhaps emerge over time.

If variants of US model 2, or Swiss model 3, are presently implausible what of model 4, the variable geometry model. There has been much talk of variable geometry or a Europe of two speeds. Could such a model be applied to EU-related referendums? In essence, variable geometry involves an inner core of the sub-units pushing ahead with integration while an outer core waits until it can overcome domestic political constraints should it wish to join. Indeed, there are constitutional mechanisms, known as 'enhanced cooperation', that allow a select group of member states (at least eight) to push ahead in a given policy domain using the EU machinery (Bribosia 2007). The problem is that these provisions relate to particular policy fields rather than a polity's basic constitutional architecture. If the Lisbon Treaty starts to unravel, then variable geometry may become a reality even for the EU's basic constitutional architecture. Let us examine this theoretical construct further with regard to EU-related referendums. The upper right box suggests the presence of vertically integrated referendum mechanisms, i.e. an EU-level referendum, but with horizontally fragmented mechanisms at the sub-unit level, i.e. variation among the member states with regard to referendums on EU integration issues (as is presently the case). This sounds bizarre. How would it work? Essentially, some variant of "enhanced cooperation" could be used to institute a vertically integrated referendum for an inner core of member states. These sub-units could submit further federalisation packages to a popular vote across the inner-core in the same way referendums are held in Switzerland or Australia. However, the outer-core would not be subject to this procedure, hence the horizontal fragmentation. In a way there are already precedents for this, such as the eurozone for monetary matters and Schengen for certain justice and home affairs issues. The crucial point is that decision-making in these areas is presently not subject to a popular vote, neither is it likely to be. The variable geometry model represents a legal nightmare, but then the EU as a polity is no stranger to this. Still, the model appears rather implausible and is pursued here for mainly theoretical purposes. The logic of this variable geometry could also be inverted. This is probably more plausible and legally more elegant. In this case, the sub-units forming the inner-core would formally agree *not* to hold EU integration referendums. Functionally speaking, this would take us from model 4 towards model 2.

So, where have we ended up? At first sight it may appear that the comparative route has led us to an unsatisfactory end destination. Though we have steadfastly followed the comparative track to analyse EU related models of direct democracy, we are unable to adjudicate between the

competing models, especially 2 and 3. This is not unrelated to the fact that the process we have analysed is at an embryonic stage. Nonetheless, the comparative method has allowed us to isolate some institutional features that are linked to particular outcomes and this has revealed some novel insights about the EU. In doing so, the comparative perspective has also demonstrated why model 1 is unsustainable while pointing to possible institutional trajectories. In short we learn by comparing. But, the nature of comparison matters. Much of the literature on EU-related referendums, though technically comparative, suffers from the classic problem of not being able to see the forest for the trees. It compares the trees rather than the forest. Behaviourist approaches, in particular, can get so caught up in small details that they fail to grasp the bigger picture. Without more explicit cross-polity comparison, the approach is probably ill-suited for analysing future institutional trajectories of the EU. The simple argument put forward in this article is that adopting a broader comparative perspective provides us with a lens with which to view the bigger picture. In terms of the bigger picture, while we cannot choose between the models we can ascertain that in terms of a host of institutional features (apart from size and population) the EU comes closest to the Swiss model of federalism. Whether we focus on the structure of the collegial executive, electoral systems, consensus styles of policy-making, decentralised modes of policy implementation, territorially concentrated cross-cutting cleavages, modes of interest intermediation, party fragmentation indices, and much else, the similarities are quite striking. None of this implies the EU will follow the Swiss trajectory of direct democracy, which in its full manifestation is clearly infeasible for the EU. At best, and given the embryonic stage of development, we can learn from comparing the interplay of EU federalism and direct democracy with other polities such as the US and Switzerland.

References

- Albi, A. and Ziller, J. (2007), *The European Constitution and National Constitutions: Ratification and Beyond*, Netherlands: Kluwer Law International.
- Auer, A. (2005), 'Adoption, Ratification and Entry into Force', *European Constitutional Law Review*, 1, 131-135.
- . (2007), 'National Referendums in the Process of European Integration: Time for Change', in Albi, A. and Ziller, J. (ed.), *The European Constitution and National Constitutions: Ratification and Beyond* (261-271), Netherlands: Kluwer Law International.
- Auer, A. and Flauss, J.-F. (1997), *Le Référendum Européen*, Brussels: Bruylant.
- Blondel, J. (1997), 'Political Opposition in the Contemporary World', *Government and Opposition*, 32, 462-486.
- Bogdanor, V. (1994), 'Western Europe', in Butler, D. and Ranney, A. (ed.), *Referendums Around the World. The Growing Use of Direct Democracy* (25-97), London: Macmillan.
- Bowler, S. and Donovan, T. (1998), *Demanding Choices: Opinion, Voting and Direct Democracy*, Ann Arbor: University of Michigan.
- Braun, D. (2000), 'The Territorial Division of Power in Comparative Public Policy Research: an Assessment', in Braun, D. (ed.), *Public Policy and Federalism* (27-56), Aldershot: Ashgate.
- Bribosia, H. (2007), 'Les coopérations renforcées', in Amato, G., Bribosia, H. and de Witte, B. (ed.), *Genèse et destinée de la Constitution européenne: Commentaire du Traité établissant une Constitution pour l'Europe à la lumière des travaux préparatoires et perspectives d'avenir* (623-644), Brussels: Bruylant.
- Butler, D. and Ranney, A. (1994), *Referendums around the World. The Growing Use of Direct Democracy*, Washington: Macmillan - American Enterprise Institute for Public Policy Research.
- Carey, S. (2002), 'Undivided Loyalties: Is National Identity an Obstacle to European Integration?', *European Union Politics*, 3, 387-413.
- Christin, T., Hug, S. and Sciarini, P. (2002), 'Interests and information in

- referendum voting: an analysis of Swiss voters', *European Journal of Political Research*, 41, 759-776.
- Closa, M. C. (2007), 'Why convene referendums? Explaining choices in EU constitutional politics', *Journal of European Public Policy*, 4, 1311-1332.
- de Witte, B. (2005), 'The Process of Ratification and the Crisis Options: A Legal Perspective', in Curtin, D. M., Kellermann, A. E. and Blockmans, S. (ed.), *The EU Constitution: The Best Way Forward? (21-38)*, The Hague: TMC Asser Press.
- Deloche-Gaudez, F. (2007), 'La Convention européenne sur l'avenir de l'Europe: ruptures et continuités', in Amato, G., Bribosia, H. and de Witte, B (ed.), *Genèse et destinée de la Constitution européenne: Commentaire du Traité établissant une Constitution pour l'Europe à la lumière des travaux préparatoires et perspectives d'avenir (47-86)*, Brussels: Bruylant.
- . (2003), 'Bruxelles-Philadelphie. D'une Convention à l'autre', *Critique Internationale*, 3, 135-150.
- Donahue, J. D. and Pollack, M. A. (2001), 'Centralisation and its Discontents: the rhythms of federalism in the United States and the European Union', in Nicolaidis, K. and Howse, R. (ed.), *The Federal Vision: Legitimacy And Levels Of Governance In The US And The EU (73-117)*, Oxford: Oxford University Press.
- Elazar, D. J. (1987), *Exploring Federalism*, Tuscaloosa: University Alabama Press.
- Fabbrini, S. (2004), 'Transatlantic constitutionalism: Comparing the United States and the European Union', *European Journal of Political Research*, 43, 547-569.
- Fabbrini, S. and Sicurelli, D. (2004), 'The Federalisation of the EU In The Light of the 'Compound Republic Theory': the convention's debate', *Regional and Federal Studies*, 14, 232-254.
- Føllesdal, A. (2003), *Stanford Encyclopedia of Philosophy: Federalism*, Available at: <http://plato.stanford.edu/entries/federalism/>.
- Føllesdal, A. and Hix, S. (2006), 'Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik', *Journal of Common Market Studies*, 44, 533-562.
- Franklin, M. (2002), 'Learning from the Danish case: A comment on Palle

- Svensson's critique of the Franklin thesis', *European Journal of Political Research*, 41, 757-757.
- Franklin, M., Marsh, M. and McLaren, L. (1994), 'Uncorking the bottle: popular opposition to European unification in the wake of Maastricht', *Journal of Common Market Studies*, 32, 455-472.
- Glass, H. E. (1978), 'Consensus and Opposition in Switzerland: A Neglected Consideration', *Comparative Politics*, 10, 361-372.
- Hall, P. and Taylor, R. (1996), 'Political science and the three new institutionalisms', *Political Studies*, 44, 936-957.
- Helms, L. (2004), 'Five Ways of Institutionalizing Political Opposition: Lessons from the Advanced Democracies', *Government and Opposition*, 39, 22-54.
- Hix, S. (1999), 'Dimensions and alignments in European Union politics: Cognitive constraints and partisan responses', *European Journal of Political Research*, 35, 69-106.
- . (1998), 'Elections, parties and institutional design: A comparative perspective on European Union democracy', *West European Politics*, 21, 19-52.
- Hix, S. and Lord, C. (1997), *Political parties in the European Union*, Basingstoke: Macmillan.
- Hooghe, L. and Marks, G. (2005), 'Community, Calculation and Cues', *European Union Politics*, 6, 421.
- Hooghe, L., Marks, G. and Wilson, C. J. (2002), 'Does Left/Right Structure Party Positions on European Integration?', *Comparative Political Studies*, 35, 965-989.
- Hug, S. (2002), *Voices of Europe. Citizens, Referendums and European Integration*, New York: Rowman & Littlefield.
- Hug, S. and Sciarini, P. (2000), 'Referendums on European Integration', *Comparative Political Studies*, 33, 3-36.
- Kelemen, R. D. (2004), *The Rules of Federalism: Institutions and Regulatory Politics in the EU and Beyond*, Cambridge, MA: Harvard University Press.
- . (2000), 'Regulatory federalism: EU environmental policy in comparative perspective', *Journal of Public Policy*, 20, 133-167.

- Keman, H. (2000), 'Federalism and Policy Performance', in Wachendorfer-Schmidt, U. (ED.), *Federalism and Policy Performance (196-227)*, London: Routledge.
- Kirchheimer, O. (1957), 'The Waning of Opposition in Parliamentary Regimes', *Social Research*, 24, 127-156.
- Lehmbruch, G. (1993), 'Consociational Democracy and Corporatism in Switzerland', *Publius*, 23, 43-60.
- Lijphart, A. (1984), *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries*, New Haven: Yale University Press.
- Linder, W. (2006), 'Direct Democracy', in Papadopoulos, I. et al. (ed.), *Handbook of Swiss Politics*, Zurich: NZZ Publishing.
- Lipset, S. M. and Rokkan S. (1967), *Party Systems and Voter Alignments: Cross-National Perspectives*, New York: The Free Press.
- Magleby, D. B. (2001), *Direct Legislation: Voting on Ballot Propositions in the United States*, Baltimore: Johns Hopkins University Press.
- . (1998), 'Ballot Initiatives and Intergovernmental Relations in the United States', *The Journal of Federalism*, 28, 147-163.
- Mair, P. (2007), 'Political Opposition and the European Union', *Government and Opposition*, 42, 1-17.
- . (2004), 'The Europeanization Dimension', *Journal of European Public Policy*, 11, 337-348.
- Majone, G. (2005), *Dilemmas of European Integration: The Ambiguities and Pitfalls of Integration by Stealth*, Oxford: Oxford University Press.
- Marks, G., Wilson, C. J. and Ray, L. (2002), 'National political parties and European integration', *American Journal of Political Science*, 46, 585-594.
- Matsusaka, J. (2003), 'The Initiative and Referendum in American Cities: Basic Patterns', in Waters M. D. (ED.), *The Initiative and Referendum Almanac: A Comprehensive Reference Guide to Citizen Lawmaking around the World*, Durham, NC: Carolina Academic Press.
- McKay, D. (2005), 'Economic logic or political logic? Economic theory, federal theory and EMU', *Journal of European Public Policy*, 12,

528-544.

---. (1999), *Federalism and European Union: A Political Economy Perspective*, Oxford: Oxford University Press.

McLaren, L. (2002), 'Public Support for European Integration: Cost/Benefit Analysis or Perceived Cultural Threat', *Journal of Politics*, 64, 551-566.

Mendez, F. (2005), 'The European Union and cybercrime: insights from comparative federalism', *Journal of European Public Policy*, 12, 509-527.

Menon, A. and Schain, M. (2006), *Comparative Federalism: The European Union and the United States in Comparative Perspective*, Oxford: Oxford University Press.

Norris, P. (1997), 'Representation and the democratic deficit', *European Journal of Political Research*, 32, 273-282.

Obinger, H., Leibfried, S. and Castles, F. G. (2005), 'Bypasses to a social Europe? Lessons from federal experience', *Journal of European Public Policy*, 12, 545-571.

Pernice, I. (2006), 'Référendum sur la Constitution pour l'Europe: conditions, risques et implications', in Kaddous, C. and Auer, A. (ed.), *Les principes fondamentaux de la Constitution européenne (301-315)*, Genève: Helbing & Lichtenhahn.

---. (2002), 'Multilevel constitutionalism in the European Union', *European Law Review*, 27, 511-529.

Pierson, P. (2000), 'Increasing Returns, Path Dependence, and the Study of Politics', *The American Political Science Review*, 94, 251-267.

Ponzano, P., Ziller, J. and Pii, S. (2007), *Un référendum européen pour la Constitution européenne : problèmes juridiques et politiques*, Florence: European University Institute (Policy paper (Robert Schuman Centre) RSCAS PP 2007/01.

Qvortrup, M. (2006), 'The Three Referendums on the European Constitution Treaty in 2005', *The Political Quarterly*, 77, 89-97.

---. (2002), *A comparative study of referendums: government by the people*, (2nd ed.), Manchester: Manchester University Press.

Ray, L. (2003), 'When Parties Matter: The Conditional Influence of Party

- Positions on Voter Opinion about European Integration', *Journal of Politics*, 65, 978-994.
- Riker, W. H. (1980), 'Implication from the Disequilibrium of Majority Rule for the Study of Institutions', *The American Political Science Review*, 74.
- . (1964), *Federalism: Origin, Operation, Significance*, Boston and Toronto: Little, Brown and Co.
- Rose, R. (2000), 'The end of consensus in Austria and Switzerland', *Journal of Democracy*, 2, 26-40.
- Schneider, G. and Weitsman, P. A. (1996), 'The Punishment Trap: "Integration Referendums as Popularity Contests"', *Comparative Political Studies*, 28, 582-607.
- Schönlau, J. (2007), 'The Convention on the Future of Europe and its Antecedents', in Castiglione, D., Schönlau, J., Longman, C., Lombardo, E., Pérez-Solórzano, N. and Aziz, M. (ed), *Constitutional Politics in the European Union: The Convention Moment and its Aftermath (51)*, Palgrave Macmillan.
- Setälä, M. (1999), 'Referendums in Western Europe - A Wave of Direct Democracy', *Scandinavian Political Studies*, 22, 327-340.
- Shepsle, K. A. (1979), 'Institutional Arrangements and Equilibria in Multidimensional Voting Models', *American Journal of Political Science*, 23, 27-59.
- Siune, K, Svensson, P. and Tonsgaard, O. (1994), 'The European Union: The Danes Said 'No? in 1992 but 'Yes in 1993: How and Why?', *Electoral Studies*, 13, 107-136.
- Steenbergen, M. R., Edwards, E. E. and de Vries, C. E. (2007), 'Who's Cueing Whom? Mass-Elite Linkages and the Future of European Integration', *European Union Politics*, 8, 13-35.
- Stepan, A. (1999), 'Federalism and democracy: beyond the US model', *Journal of Democracy*, 10, 19-34.
- . (1990), 'On the tasks of a Democratic Opposition', *Journal of Democracy*, 1, 41-49.
- Svensson, P. (2007), 'Voting Behaviour in the European Constitution Process', in Pallinger, T., Kaufmann, B., Marxer, W. and Schiller, T. (ed), *Direct Democracy in Europe: Developments and Prospects (163-173)*, Wiesbaden : VS-Verlag.

- . (2002), 'Five Danish Referendums on the European Community and European Union: A critical assessment of the Franklin thesis', *European Journal of Political Research*, 41, 733-750.
- . (1994), 'The Danish Yes to Maastricht and Edinburgh. The EC Referendum of May 1993', *Scandinavian Political Studies*, 17, 69-82.
- Thorlakson, L. (2005), 'Federalism and the European party system', *Journal of European Public Policy*, 12, 468-487.
- Trechsel, A. (2005), 'How to federalize the European Union...and why bother', *Journal of European Public Policy*, 12, 401-418.
- van der Eijk, C. and Franklin, M. (2004), 'Potential for Contestation on European matters at National Elections in Europe', in Marks, G. and Steenbergen, M. (ed.), *European Integration and Political Conflict (32-50)*, New York: Cambridge University Press.
- von Beyme, K. (1987), *America As a Model: The Impact of American Democracy in the World*, London: Palgrave Macmillan.
- Ziller, J. (2007), 'Le processus des ratifications et la période de réflexion', in Amato, G., Bribosia, H. and de Witte, B (ed.), *Genèse et destinée de la Constitution européenne: Commentaire du Traité établissant une Constitution pour l'Europe à la lumière des travaux préparatoires et perspectives d'avenir (137-186)*, Brussels: Bruylant.